

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.08.2019

Delivered on : 29.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.No. 2329 of 2018
&
C.M.P.No.18531 of 2018
&
C.M.P.Nos.6193 & 6194 of 2019

Periyar University
Rep. by its Registrar
Salem - 636 011

.... Appellant/2nd Respondent

-vs-

1.R.Saravanan

.... 1st Respondent/Petitioner

2.The Government of Tamilnadu
Rep by its Secretary
Department of Higher Education
Fort St. George
Chennai - 600 009

... 2nd Respondent/Petitioner

3.The General Secretary
Periyar University
Salem - 600 009.

.... 3rd Respondent/3rd Respondent

(R3 Suo Moto impleaded as per order dated
29.08.2017 made in WP. No. 12510/2012 & 23936/13)

Write Appeal filed under Clause 15 of Letters Patent against the
order in W.P.No.23936 of 2013 dated 27.11.2017 on the file of
the High Court of Judicature at Madras.

WP.No. 23936 of 2013 Prayer: Writ Petition filed under Article
226 of the Constitution of India to issue a Writ of
Certiorarified Mandamus Calling for the records of the second
respondent issued in his proceedings PU/Estt/ D2/018485/2013
dated 26.7.2013 quash the same and consequently direct the
respondents to reinstate the petitioner in service with all
consequential benefits.

For Appellant : Mr.Godson Swaminath

For Respondent 1 : Mr.N.G.R.Prasad
for Mr.T.Sellapandian

For Respondent 2 : Mr.C.Munusamy,
Special Government Pleader
Education

For Respondent 3 : Not ready in notice

J U D G M E N T

[Judgement of the Court was delivered by P.T.ASHA,J.]

This Intra-Court appeal is instituted by the 2nd respondent in the Writ Petition challenging the order passed in W.P.No.23936 of 2013 in and by which the order removing the 1st respondent herein from their services as Deputy Registrar with effect from 27.07.2013 has been set aside and the appellant was directed to reinstate him into service with effect from 26.07.2013 with all monetary benefits.

The facts of the case:

2.The 1st respondent herein was appointed as an Assistant Registrar by order dated 02.05.2000. Thereafter, by an order dated 31.07.2006 he was promoted as Deputy Registrar. There were several allegations of corruption, favouritism and misconduct against the 1st respondent. The 2nd respondent has informed the Appellant University (hereinafter referred to as the University) vide their letter dated 04.06.2008 about the assets held by the 1st respondent and his family. Thereafter, the 2nd respondent herein had directed the Vice-Chancellor of the University vide their letters dated 24.12.2008 and 10.02.2009 to constitute an enquiry committee to probe into the allegations. This was also communicated to the 1st respondent vide letter dated 25.02.2009 of the University.

3. In pursuance to the said letter the Vice Chancellor of the University had constituted a Three Member Committee, herein after referred to as the Committee to make an enquiry and submit their report on or before 16.03.2009, so as to enable the appellant to forward a report to the 2nd respondent herein. The 1st respondent was asked to co-operate with the enquiry to be conducted by the Committee.

4. The Professor & Head of the Department, Physics, the Professor & Head of the Department, Economics and the Professor & Head of the Department, Sociology were nominated as the members of the Committee on 25.02.2009. Thereafter, by a notice

of the same day the Committee had directed the 1st respondent to appear before them on 08.04.2009 at 4.00 p.m.

5. When the 1st respondent appeared before the Committee he was given a copy of the letter dated 04.06.2008 and he was asked to give his explanation to the same within a period of 15 days. He was also informed that if there is no reply it would be construed that he was accepting the charges made against him. By letter dated 23.04.2009 addressed to the Convenor of the Committee the 1st respondent had replied to the charges levelled against him.

6. It is the contention of the Appellant herein that the 1st respondent who was holding administrative charge of the University had threatened the Committee members and had refused to co-operate with the Enquiry. The members of the Committee were unable to proceed further in the matter and later the Professor & Head of the Department, Economics, Mr.S.Rajendran had resigned since the Committee could not move ahead with the enquiry. In his place an independent person who was an outsider was appointed as the member of the Committee.

7. Meanwhile, the Government by their letters dated 28.10.2008, 24.12.2008 and 10.02.2009 were insisting on appellant forwarding the enquiry report. As the Committee was unable to show progress, the 2nd respondent directed constitution of One Man Commission to enquire into the matter since they were apprehensive that the 1st respondent would thwart the enquiry proceedings.

8. Pursuant to the above instructions, the appellant had appointed R.Ponnusamy, retired District and Sessions Judge as the One Man Commission, hereinafter referred to as the Commission on 18.04.2011 to enquire into the charges that had been referred to by the 2nd respondent vide letter dated 04.06.2008. The 1st respondent immediately challenged the appointment of the Commission by filing W.P.No.12510 of 2013 and the same was dismissed as infructuous since the Enquiry Officer had already been appointed.

9. On 06.06.2011, the Commission had framed charges and copies of the same was given to the 1st respondent calling for his explanation. A total of 14 charges were framed which included two additional charges which was framed by the Commission on perusing the statement of either side. The additional charges arose from and out of the 12 charges already framed. The 1st respondent had also submitted his explanation to the charges and the enquiry was conducted between 29.08.2011 to 04.06.2012. The 1st respondent was given adequate opportunities to put forward his case.

10. Ultimately, the Commission submitted its report on 12.10.2012, wherein, the Commission held that charge Nos.1, 4, 10, 13 and 14 were proved and charge Nos.2, 3, 5, 6, 7, 8, 9, 11 and 12 as not proved. This report was also furnished to the 1st respondent by the appellant vide letter dated 08.07.2013 and called upon him to submit his objection to the findings of the Commission.

11. By letter dated 22.07.2013, the 1st respondent had given his objection to the report. Thereafter by letter dated 04.07.2013, the 2nd respondent after considering the report of the Commission and the objection of the 1st respondent had directed the appellant to take necessary action against the 1st respondent. The action taken report was directed to be sent to the Government within a month without fail.

12. In an extraordinary meeting of the Syndicate of the Appellant University held on 26.07.2013 which was called to consider the report of the Commission and the objections raised by the 1st respondent it was resolved to accept the report of the Commission and accept its finding relating to charges 1 to 10 especially charges 1, 4, 10 which stood proved. However the Syndicate decided to keep in abeyance the findings relating to the charges 13 and 14. The Syndicate resolved that the punishment of dismissal from service be awarded to the 1st respondent with effect from 27.07.2013. By letter dated 26.07.2013 the 1st respondent was informed about the decision of the Syndicate. Challenging the said order of removal from service the 1st respondent had filed W.P.No.23936 of 2013.

13. The Appellant had filed a very detailed counter in the Writ Petition, wherein, they had contended that the very enquiry had been initiated only at the behest of the 2nd respondent who had taken note of the disproportionate assets worth several crores, that the 1st respondent has amassed wealth despite the fact that he was drawing only a monthly salary of Rs.29,175/-. The Appellant would further submit that the Commission had arrived at its finding only after giving sufficient opportunity to the 1st respondent to put forward his case and after examining the evidence on record. By reason of this detailed enquiry the Commission had arrived at the finding that charges 1, 4, 10, 13 and 14 stood proved.

Order under Challenge:

14. The learned Single Judge by order dated 27.11.2017 proceeded to allow the Writ Petition on the ground that there was insufficient evidence available to show that the 1st respondent had misused his position as a Deputy Registrar for obtaining affiliation for the College run by his Wife and therefore the charge No.1 was without any basis.

15. Charge No.4 relates to the failure to obtain the prior permission of the University for putting up construction of house. The learned Single Judge has held that the finding of the Commission that the 1st respondent had not produced the title documents to prove that the house belonged to his mother and therefore it was to be held that the property belonged to the 1st respondent was wrong. The learned Judge has absolved the 1st respondent of this charge by stating that the equated monthly instalments for the loan was being paid from his salary and that would prove that he is the co-obligant for the housing loan obtained for the construction of the house. However the learned Single Judge has not addressed the charge of prior permission not having been obtained before the loan was borrowed and the construction put up.

16. The learned Judge has allowed the Writ Petition on the ground that the charges were not very specific and therefore the findings of the One Man Commission was totally wrong.

Submissions:

17.Mr.Godson Swaminathan, learned counsel appearing on behalf of the University would submit that the authority wielded by the 1st respondent on the administration of the College was so intense and strong and that the members of the original Three Member Enquiry Committee who were the Professors/HOD of various faculties in the University were unwilling to proceed with the enquiry fearing retribution from the 1st respondent.

18.The learned Standing Counsel would further submit that the 1st respondent had misused his position as Deputy Registrar in the following manner:

(a) The 1st respondent's wife was a trustee of one Annai Educational and Charitable Trust which proposed to start a College in the name and style of the Ganga College of Education at Mettukadu, Moolapadai, Salem. It is seen that permission for starting the College was given on 08.11.2006 by the NCTE, Bangalore and a request for affiliation was made to the Registrar of the appellant University on 17.11.2016. On the very same day the 1st respondent had affixed his signature to the request and forwarded it for the the scrutiny of the Registrar Incharge, the Superintendent and the Vice Chancellor all on the very same day. On the basis of the approval note it appears that on the very same day the Vice Chancellor had also granted approval. Infact the Vice Chancellor had opined that since the Courts had ruled not to insist on a NOC the application for affiliation could be granted without the NOC. While approving the affiliation it was also decided to grant fresh provisional to the said college for offering B.Ed courses for the academic year 2006 - 2007.

(b) He would also draw the attention of the Court to the

minutes of the affiliation Committee meeting which was held within 7 days of the grant of affiliation in which it was resolved to grant fresh provisional affiliation to the Ganga College of Education for 2007 after getting the compliance report. The agenda regarding the grant of provisional affiliation was added as an additional agenda. The agenda was immediately taken up for consideration and the same was unanimously passed in addition to the other subjects.

(c) He would also point out that on 29.12.2006 the Trust running the Ganga College of Education had submitted the compliance report along with the affiliation fees as well as the endowment receipt and requested the issue of the affiliation order. Once again, the 1st respondent had signed note and submitted the same for the orders of the Vice Chancellor on the very same day, namely, 29.12.2006. The orders of the Vice Chancellor and the Registrar incharge has been obtained on the very same day.

(d) The counsel would further draw our attention to the manner in which the Inspection had been conducted for the grant of affiliation. The Inspection appears to have been conducted within 5 days of the request for affiliation. Infact, the Registrar incharge of the appellant university has constituted an Inspection commission on 20.11.2006 which is within 3 days of the receipt of the application for grant of affiliation.

19. The learned counsel for the University would further argue that every permission that has been granted was only at the behest of the 1st respondent and done with such speed which would clearly proves his vested interest. Therefore the learned counsel would argue that the findings of the One Man Commission with reference to charge No.1 stood proved and the learned Judge has not taken note of all these details.

20. As regards charge No.4, the learned counsel would argue that the 1st respondent had not produced any documents to show ownership of the property concerned and had submitted only a loan statement showing him as a co-obligant. However prior to affixing his signature as co-obligant, the 1st respondent had not obtained the permission of the University and had therefore violated the Tamilnadu Government Servants Conduct Rules, 1973. The Commission has also found that the repayment did not co-relate to his regular sources of income. Though the appellant had submitted that there was some properties available in his name prior to joining the service of the University he had not produced any documents to substantiate the same.

21. He would also point out that even the charge relating to the purchase of vehicles without the prior permission of the University stood proved. As regards charge No.14 which related to the violation of the eligibility rules of Ph.D registration,

the Commission had observed that the 1st respondent had got himself registered for a Ph.D programme within 1.5 years of his obtaining his M.A (Tamil Degree) and that the eligibility for Ph.D is 4 years after completion of required qualification.

22. The learned counsel would therefore submit that the learned single Judge has failed to take note of the fact that the 1st respondent who is drawing a salary of Rs.29,175/- has not been able to substantiate as to how he is servicing the loan taken for the house and the vehicles.

23. Mr.N.G.R.Prasad, learned counsel appearing on behalf of Mr.T.Sellapandian, learned counsel for the 1st respondent would contend that the entire exercise undertaken by the appellant University was vindictive. He would submit that the Commission had exceeded its appointment order by including charges which were not originally referred by the 2nd respondent. He would submit that the learned single Judge has in detail perused the report and thereafter passed a reasoned order allowing the Writ Petition and setting aside the order passed by the Commission and no exception can be taken for the same.

Discussion:

24.The Commission had framed the following charges:

a) The 1st respondent had processed the file for granting approval to the Ganga College of Education in which the 1st respondent's wife was a Managing Trustee and therefore the 1st respondent had influenced the office of the authority to grant immediate affiliation.

b) The 1st respondent had influenced the University to setup a study centre namely Sarada Study Centre in which the managing trustee of the Ganga College of Education, namely, the 1st respondent's wife was a Co-ordinator.

c) The Amman Study centre was binami of the 1st respondent.

d) Without obtaining permission the 1st respondent was owning house at No.118, C-03, Periyar Nagar, Ammapet, Salem.

e) The 1st respondent using his influence had cut down excess number of fruit yielding trees though the PWD had recommended to cut only 109 Karuvel trees.

f) The tender processing of the Canteen for the year 2006 has been manipulated by the 1st respondent with the help of some officials and this canteen was being run binami on behalf of the 1st respondent.

g) The Government vehicle has been misused by the Ganga College of Education for their own use.

h) The 1st respondent is found to be in possession of over Rs.25,00,000/- of Jewellery which is disproportionate to his income.

i) The 1st respondent has deposits an investments for over

Rs.25,00,000/- which is once again disproportionate to his salary income.

j) His Santro Car which is worth more than Rs.4,00,000/- is also appears to have been brought from other income

k) His TATA Sierra Car which is worth more than Rs.2,00,000/- also appears to have been brought from other income

l) His Mahendra Jeep which is worth more than Rs.3,00,000/- also appears to have been brought from other income

m) Illegal appointment as the Assistant Registrar

n) The University's rules and regulations had been flouted for obtaining Ph.D degree without proper channel.

The last two charges had been framed by the Commission later. Ultimately after a detailed enquiry the Commission has come to the conclusion that it was only charge Nos.1, 4, 10, 13 and 14 which stood proved and the other charges had not been proved.

25. The main allegation against the 1st respondent is that he has misused his position as the Deputy Registrar of the University to get the approval and affiliation from the University for establishing the Ganga College of Education in which his wife is the Managing Trustee and his other family members are trustees. From the records it is seen that this trust had been formed only on 05.12.2005 with the 1st respondent's wife Nagalakshmi as its Managing Trustee. The main object of the trust was to establish Residential and Non-Residential Schools, Colleges including Professional Colleges for imparting other kinds of education and training institution for the utility and welfare of the general public.

26. It is seen that, one month short of an year, the trust had obtained permission from the NCTE, Bangalore for starting the Ganga College of Education, Salem with an intake of just 100 students. The letter is received by the 1st respondent on 17.11.2006. Thereafter on the very same day the 1st respondent who was the then Deputy Registrar and the Superintendent sent a note to the Vice Chancellor for granting approval. By reason of the said note the Vice Chancellor has also on the very same day given his approval for affiliation and the application is also issued to the Trust for considering the grant of fresh approval for offering B.Ed courses for the academic year 2006 - 2007. The demand draft for fresh affiliation has been given on 20.11.2006. In the application for starting a new College for the academic year 2006 - 2007 it is stated in column 5 that temporarily it was proposed to run the College in the campus of Jayajothi College of Education. However, the Committee constituted to inspect the College vide the University's letter dated 20.11.2006 and submit a report for granting fresh provisional affiliation for B.Ed course for the year 2006 - 2007

has inspected the said property on 22.11.2006 itself and has given a report that the infrastructure for running the College is available on site. It is also seen that the affiliation has been approved by the Syndicate within 7 days of the Vice Chancellor granting his approval for affiliation.

27. Once again on 29.12.2006, the 1st respondent has played an active part in ensuring that the further affiliation to the Ganga College of Education is approved by the Vice Chancellor on the very same day the request had reached the University. The affiliation certificate has also been issued on the same date.

28. From a perusal of the application it is seen that originally the College had informed that it would be functioning from the premises of another College but however the inspection report submitted by the committee would show that there is already a building in place for the College. The Inspection committee has recommended grant of fresh affiliation though they had opined that the Educational Technology Lab has to be improved and Education Journals be subscribed.

29. It is seen that at every stage the 1st respondent has been actively participating in moving the necessary papers for grant of approval to the Trust in which his wife is the Managing Trustee for starting the College. This clearly demonstrates the vested interest of the 1st respondent, and misuse of his official position.

30. With reference to the charge No.4, regarding the ownership of the property it is seen that the 1st respondent had not produced the document of title to establish true ownership of the property. That apart, the 1st respondent has applied for loan and the same had been sanctioned without the prior approval of the University which is a mandatory requirement under the Tamilnadu Government Servants Conduct Rules and the same is also the case regarding the purchase of vehicles by the 1st respondent, which are three in number.

31. The 1st respondent had not only manipulated the grant of affiliation to the College run by his wife but has also manipulated his admission into the Ph.D programme. In the normal course the application for registration for Ph.D can be done only after completion of 4 years of the required qualification. However, the 1st respondent within 1½ years of acquiring the Post Graduate Degree in M.A.Tamil has registered for Ph.D and the Assistant Registrar has also granted permission without the approval of the higher authorities.

32. The report submitted by the Commission stands corroborated by the documentary evidence submitted on the side of

the appellant. The 1st respondent has committed gross misconduct by misusing his position as Deputy Registrar of the University and playing an active part in obtaining the approvals and affiliations for the College in which his wife was a Managing Trustee. Further the 1st respondent who is just earning a sum of Rs.29,175/- is not only paying the equated monthly installments for the housing loan borrowed for the construction of his house but is also paying the monthly installments for the vehicles purchased by him which goes to show that he has assets disproportionate to his known source of income.

33. The impugned order of dismissal dated 26.07.2013 has been rightly issued. The order of the learned Single Judge is liable to be set aside as the same does not take into consideration the plethora of evidence placed before the Court by the appellant herein. The order passed by the learned Single Judge in W.P.No.23936 of 2013 is set aside. The Intra-Court Appeal is allowed. No costs. Consequently, connected Civil Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Government of Tamilnadu
Rep by its Secretary
Department of Higher Education
Fort St. George
Chennai - 600 009

2.The General Secretary
Periyar University
Salem - 600 009.

+1cc to Mr.T.Sellapandian, Advocate, S.R.No. 74531
+1cc to Mr.P.Godson Swaminath, Advocate, S.R.No. 74303
+1cc to the Government Pleader, S.R.No. 75588

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C.M.P.No.18531 of 2018 &
C.M.P.Nos.6193 & 6194 of 2019

GMR(CO)
GN(10/10/2019)